IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

CIVIL REVISION APPLICATION NO. 157 OF 2006

SHANKAR Y. PHADOL & ORS. ..PETITIONERS

V/S

SMT. YEMUNABAI B. RAJOLE & ANR. ..RESPONDENTS

SHAKUNTALA MUDBIDRI FOR PETITIONERS.

CORAM : D.G. KARNIK, J.

DATE : 31-8-2006

P.C.

1. This civil application is directed against the Judgment and Order dated 30th June 2006 passed by the IIIrd Ad-hoc Addl. District Judge,Nashik, allowing the Misc. Application No. 172 of 2004 and thereby setting aside the order of dismissal in default the respondent’s suit and restoring it to file.

2. The respondent filed a suit against the revision petitioners, which was listed for hearing on 15th September, 1999. It was dimissed for non

appearance of the respondent on that day. The respondent thereafter made an application under Order 9 Rule 13 of the Code of Civil Civil Procedure for restoration of the suit. The application was rejected by the trial court. On appeal the learned District Court allowed the appeal and restored the suit to file. Learned counsel for the petitioners submits that the respondent claimed that he was ill and had submitted a medical certificate dated 21st September, 2001 which contained an overwriting. The medical certificate was disbelieved by the trial court. He submitted that the appellate court erred in holding that the respondent has proved the illness and erred in restoring the suit to file.

3. The appellate court relied upon the decision of this court in Mukesh Chandandas Harvani v/s. Pramilabai Sangole & Ors.reported in 2002(2) Maharashtra Law Journal 938 wherein it is held that merely because the medical certificate was not furnished, that would not lead to an inference that the plaintiff's case of illness was false. Therefore ignoring the medical certificate, the validity of which was challenged by the

petitioners, the District Judge came to the conclusion that the illness was proved. This possible finding of fact which cannot be interfered with in exercise of revisional jurisdiction. Hence the revision application is dismissed summarily.

(D.G. KARNIK, J.)